

**THIS DECISION HAS BEEN APPEALED. THE  
FOLLOWING IS THE RELATED SOAH DECISION:**

**SOAH DOCKET NO. 453-04-5925.M5**

MDR Tracking Number: M5-04-0740-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 11-7-03.

The IRO reviewed office visits, myofascial release, therapeutic exercises, and unlisted procedures from 1-24-03 through 2-13-03.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division. The disputed dates of service 10-26-02 through 11-6-02 are untimely and ineligible for review per TWCC Rule 133.307 (d)(1) which states that a request for medical dispute resolution shall be considered timely if it is received by the Commission no later than one year after the dates of service in dispute. The Commission received the medical dispute on 11-7-03.

On 3-2-04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

The following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	Reference	Rationale
11/13/02	99213-MP 97010 97014 97250 E0943	\$48.00 \$11.00 \$15.00 \$43.00 \$40.00	\$0.00	R	Rule 133.307(g)(3) (A-F)	Commission records indicate that the TWCC-21 on file relates to income benefits and not medical benefits. Therefore, this review will be per the 1996 <i>Medical Fee Guideline</i> . Relevant information supports delivery of service except for the DME. Recommend reimbursement of \$48.00, \$11.00, \$15.00, \$43.00 = \$117.00.
11/15/02	99213-MP 97010 97014 97250	\$48.00 \$11.00 \$15.00 \$43.00	\$0.00	R		Commission records indicate that the TWCC-21 on file relates to income benefits and not medical benefits. Therefore, this review will be per the 1996 <i>Medical Fee Guideline</i> . Relevant information supports delivery of service. Recommend reimbursement of \$48.00, \$11.00, \$15.00, \$43.00 = \$117.00.
12/4/02	99213-MP 97014 97250 97110 (4 units)	\$48.00 \$15.00 \$43.00 \$140.00	\$0.00	C	Rule 133.307(g)(3) (A-F)	Requestor did not challenge carrier's denial rationale or dispute the existence of a contract. Neither party submitted a copy of a negotiated contract. No reimbursement recommended.
1/16/03	99213-MP 97250 97110 (4 units)	\$48.00 \$43.00 \$140.00	\$0.00	R		Commission records indicate that the TWCC-21 on file relates to income benefits and not medical benefits. Therefore, this review will be

DOS	CPT CODE	Billed	Paid	EOB Denial Code	Reference	Rationale
						per the 1996 <i>Medical Fee Guideline</i> . <b>99213-MP, 97250: Relevant information supports delivery of service. Recommend reimbursement of \$48.00 + \$43.00 = \$91.00.</b> 97110: See RATIONALE below.
TOTAL		\$751.00	The requestor is entitled to reimbursement of \$325.00.			

**RATIONALE:** Recent review of disputes involving CPT code 97110 by the Medical Dispute Resolution section as well as analysis from recent decisions of the State Office of Administrative Hearings indicate overall deficiencies in the adequacy of the documentation of this code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes “one-on-one”. Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division (MRD) has reviewed the matters in light of the Commission requirements for proper documentation.

The MRD declines to order payment for code 97110 because the daily notes did not clearly delineate the severity of the injury that would warrant exclusive one-to-one treatment.

### ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable for dates of service 11-13-02 through 1-16-03 in this dispute.

This Order is hereby issued this 8<sup>th</sup> day of April 2004.

Dee Z. Torres  
Medical Dispute Resolution Officer  
Medical Review Division

March 2, 2004

Rosalinda Lopez  
Texas Workers' Compensation Commission  
Medical Dispute Resolution  
Fax: (512) 804-4868

**REVISED REPORT**  
**Corrected dates of service and decision.**

Re: MDR #: M5-04-0740-01  
IRO Certificate No.: 5055

\_\_\_ has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, \_\_\_ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of \_\_\_ and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is certified in Chiropractic Medicine.

**REVIEWER'S REPORT**

**Information Provided for Review:**

Correspondence and Plan documentation  
H&P and office notes  
Physical therapy notes  
Functional Capacity Evaluation  
Radiology report

**Clinical History:**

This claimant is a 46-year-old male who sustained a work-related injury on \_\_\_ to his cervical region and left upper quarter. On 08/27/02 radiographs were performed and were unremarkable for osseous pathology; pain medication was prescribed. The claimant presented to the office of the chiropractor and was diagnosed with cervicobrachial syndrome, cervical radiculitis, left shoulder strain/sprain, and left elbow lateral epicondylitis.

A trial of conservative applications that include electrical stimulation, myofascial release, and therapeutic exercise were advised. MR imaging of the cervical spine, performed on 11/02/02, revealed C2/3 posterior central protrusion/spondylosis, C3/4 large lateral bulge on left, C5/6 anterior spurring/bulging borderline sagittal canal stenosis.

Neurodiagnostics performed on 12/11/02 revealed evidence that is suggestive of a C3 and C4 nerve radiculopathy on the left. Functional capacity evaluation (FCE) performed on 02/27/03 revealed that the claimant had minimal reported cervical disability/pain (qualitative/quantitative questionnaire), near normal AROM in cervical/upper quarter, and PBO varied between light medium and sedentary

**Disputed Services:**

Office visits, myofascial release, therapeutic exercises, and unlisted procedures during the period of 01/24/03 through 02/13/03.

**Decision:**

The reviewer agrees with the determination of the insurance carrier and is of the opinion that the treatment and services in dispute as stated above were not medically necessary

**Rationale:**

The claimant's condition cannot be adequately placed within strain/sprain therapeutic algorithm. Thus, it is not appropriate for the claimant's treatment to be classified within the context of a strain. Peer reviewer states that the Official Disability Guidelines indicate that 10 chiropractic sessions are warranted in the treatment of this claimant. This is not completely correct.

The Official Disability Guidelines show an initial trial of 6 sessions over 2 weeks is considered an inappropriate control trial. If there are signs of efficacy with the applied therapeutics, then up to 18 sessions are warranted. The worker's condition can be more appropriately classified within the confounds of a mild disc injury, not a strain/sprain therapeutic algorithm. The documentation provided does not support continued utilization of passive therapeutic coupled with active therapies beyond 12/04/02. It is not clear why manipulation and myofascial are continued with active therapeutics. A clear transition to active therapeutics should have been realized by 12/04/02. The efficacy of passive therapeutics beyond 12/04/02 that include manipulation, TENS, and myofascial release is not clear.

Peer reviewer is correct in the request for McKenzie Therapeutics and the management of this claimant's condition. McKenzie Therapeutics provides an active connotation driven approach and assist the injured worker with controlling his own pain generators. A trial of these therapies and a home rehabilitation program does seem appropriate.

The aforementioned information has been taken from the following guidelines of clinical practice and/or peer reviewed references:

•Abdul Ahab S.S., et al. *Neck Retractions, Cervical Root Decompression, and Radicular Pain*. J Orthop Sprts Phys Pher, 2000 Jan; 30(1): 4-9

•Levoska S. et al. *Active or Passive Physical Therapy for Occupational Cervicobrachial Disorders? A Comparison of Two Treatment Methods with a 1-Year Followup.* Arch Phys Med Rehabil, 1993 Apr; 74(4): 425-30.

•Ylinen J. et al. *Active Neck Muscle Training in the Treatment of Chronic Pain in Women: A Randomized Controlled Trial.* JAMA, 2003 May 21; 289(19): 2509-16.

Sincerely,